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NTSB Order No. EA-3649

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 10th day of August, 1992

_____)	
THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-10484
v.)	
)	
LAYNE H. MACQUARRIE,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge Jerrell R. Davis, rendered at the conclusion of an evidentiary hearing on March 13, 1990.¹ The law judge affirmed an order of the Administrator charging respondent with violations of sections 91.75(a), 91.9, and 135.21(a) of the Federal Aviation Regulations ("FAR," 14 C.F.R.

¹An excerpt from the hearing transcript containing the initial decision is attached.

Parts 91 and 135).² Because respondent had timely filed a report with the National Aeronautics and Space Administration (NASA) pursuant to the requirements of the Aviation Safety Reporting Program (ASRP), and was a proper candidate for the program, no sanction was sought or imposed.³

²The Administrator also charged respondent with violating FAR section 91.75(b). The law judge granted respondent's motion to strike that allegation, and the Administrator did not appeal.

At the time of the subject incident, FAR sections 91.75(a), 91.9 (now 91.123(a) and 91.13(a), respectively), and 135.21(a) stated, in pertinent part:

"§ 91.75 Compliance with ATC clearances and instructions.

(a) When an ATC clearance has been obtained, no pilot in command may deviate from that clearance, except in an emergency, unless he obtains an amended clearance. However, except in positive controlled airspace, this paragraph does not prohibit him from canceling an IFR flight plan if he is operating in VFR weather conditions. If a pilot is uncertain of the meaning of an ATC clearance, he shall immediately request clarification from ATC."

"§ 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

"§ 135.21 Manual requirements.

(a) Each certificate holder, other than one who uses only one pilot in the certificate holder's operations, shall prepare and keep current a manual setting forth the certificate holder's procedures and policies acceptable to the Administrator. This manual must be used by the certificate holder's flight, ground, and maintenance personnel in conducting its operations. However, the Administrator may authorize a deviation from this paragraph if the Administrator finds that, because of the limited size of the operation, all or part of the manual is not necessary for guidance of flight, ground, or maintenance personnel."

³The ASRP allows pilots who timely file an incident report with NASA and who do not have a violation history to escape any certificate suspension stemming from that incident, provided that, among other things, the violation was inadvertent. See FAA Advisory Circular, AC No. 00-46C, ¶9(c)(1) (Feb. 4, 1985).

The Administrator alleged and respondent admitted the following facts: On October 23, 1988, respondent was pilot-in-command of WestAir Commuter Airlines Flight 127 (WCA 127) during a nighttime departure from San Francisco International Airport. Air traffic control (ATC) instructed WCA 127 to utilize Taxiway Mike (M), cross Runway 01 Left (1L), taxi into position on Runway 01 Right (1R), and hold. Runway 1R is parallel to 1L, and both are perpendicular to Taxiway M. As it approached 1R, the aircraft was cleared for takeoff. Respondent, although attempting to follow ATC instructions, mistakenly traversed 1R and turned left instead onto Taxiway Lima (L), parallel to the runway. Believing the taxiway was actually the runway, the crew commenced a takeoff roll.

The complaint alleges that ATC then realized what happened and immediately canceled the takeoff clearance. Respondent maintains that the crew discovered the error after proceeding approximately 200 feet and then aborted the takeoff before ATC canceled the clearance. Additionally, the Administrator asserted that respondent used an outdated Jeppesen airport diagram of the San Francisco Airport that did not depict Taxiway M extending past 1R. Respondent does not deny that the diagram was outdated, but insists that this should not factor into the disposition of the case. He claims that he had updated his manual but the updated diagram must have been inadvertently switched, through no fault of his own, with a superseded diagram when he attended

captain-upgrade training approximately one week prior to the incident.

In his appeal brief, respondent argues that: 1) FAR section 135.21(a) applies to operators, not individuals and, therefore, finding him in violation of this regulation was erroneous; 2) the aborted takeoff did not result in a deviation from an air traffic control clearance; and 3) his actions were not careless.⁴

After consideration of the briefs of the parties and the record below, the Board concludes that safety in air commerce or air transportation and the public interest require that the Administrator's order and the law judge's decision be affirmed, as modified herein.

We will grant respondent's appeal regarding the violation of section 135.21(a), as the Administrator has identified no valid reason for us to depart from our determination in Administrator v. Hughes, NTSB Order No. EA-2866 at 4 (1989), that this "regulation, when read as a whole, applies to operators and not individuals."

Turning to the section 91.75(a) violation, respondent maintains that the facts surrounding the incident do not support the Administrator's allegations. The regulation is inapplicable, he argues, because the aircraft merely taxied and never actually took off; therefore, he did not deviate from an ATC clearance. Respondent contends that the applicable regulation under the facts of his case was FAR section 91.87(h), which requires an

⁴The Administrator filed a brief in reply.

appropriate clearance to taxi before an aircraft may be operated on a taxiway or runway in conjunction with takeoff or landing. We disagree with respondent's analysis.

In the context of the instant case, section 91.87(h) is not the Administrator's only avenue of recourse against an airman who began a takeoff roll on a taxiway rather than on the runway that ATC directed him to use. Respondent violated section 91.75(a), in that he was cleared for takeoff on Runway 1R, not Taxiway L. The fact that respondent bypassed 1R and began to takeoff on the taxiway amply demonstrates, in our judgment, that respondent acted contrary to the specific clearance issued by ATC.

Lastly, respondent claims that he did not act in contravention to section 91.9 because he did not act carelessly, and no property or persons were harmed as a result of the incident. In addition, respondent claims that the reasons why the mistake occurred - the construction lights on a nearby runway impaired his night vision, the centerline lights on Runway 1R were not illuminated, he had only been a captain for three days when the incident occurred, he was not familiar with the San Francisco Airport, his Jeppesen diagram had been inadvertently switched with an outdated copy - serve to exonerate him. These factors may be useful in explaining respondent's actions, but they are insufficient to excuse the violation. It was careless of respondent to proceed with impaired vision, on an unfamiliar, dark taxiway, utilizing an outdated map, without recognizing his need for assistance in identifying the runway. While it is true

that the crew aborted the takeoff immediately upon discovering the error and no actual damage occurred, the potential for harm was still present. Commencing takeoff on a taxiway is dangerous, whether or not the airman acted intentionally, for the danger created by an airman's mistakes is not a function of intent.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted in part and denied in part;
and
2. The Administrator's order and the initial decision are affirmed, as modified herein.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.